



Commonwealth of Virginia
Virginia Information Technologies Agency

PAGING SERVICES (EASTERN SHORE/NORTHERN NECK)
OPTIONAL USE CONTRACT – DIT WAIVER REQUIRED*

DATE: November 17, 2003

CONTRACT #: VA-001214-ARCH

VENDOR: Arch Wireless
3805 Gaskins Road
Richmond, VA 23233

FIN: 22-3317420

CONTACT PERSON: Sandy Cossu
5480 Virginia Beach Blvd.
Suite 102
Virginia Beach, VA 23462
Phone: 757-490-3858
Fax: 757-490-9810
E-mail: sandy.cossu@arch.com

TERM: December 14, 2002 – December 13, 2004

PAYMENT: 30 Days

For Additional Information Please Call:

Technical Information:

Mr. Joe A. Parr, CPPO, VCO
Telecommunications Procurement Engineer
Phone: 804/371-5991
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NOTE: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this agreement.*Use of this contract shall be authorized on an “exception” basis as determined by the Virginia Information Technologies Agency, Director of Telecommunications. Potential users of this contract shall request a waiver stating why the existing Metrocall paging contract is not suitable for their specific requirement.

CONTRACT #VA-001214-ARCH
EXTRACT CHANGE LOG

[illegible]

DIT-62A		SCHEDULE		IFB NO.		Page:	
01/15/91				01-008		2 of 8	
NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:		INITIALS		
			(RDD) 30 DAYS ARO				
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE		
	Eastern Shore/Northern Neck & Peninsula/ Tidewater areas						
1.	Digital Numeric Paging Service (Unlimited pages) (To include paging device)	1	mo.	\$3.54	\$3.54		
2.	Alphanumeric Paging Service (Unlimited pages) (To include paging device)	1	mo.	\$7.83	\$7.83		
3.	Statewide Alphanumeric Paging Service (Unlimited pages) (To include paging device)	1	mo.	\$9.27	\$9.27		
4.	Activation Fee - Digital Numeric (if applicable)	1	ea.	NOT APPLICABLE			
5.	Activation Fee - Alphanumeric (if applicable)	1	ea.	NOT APPLICABLE			
6.	Replacement of lost/stolen Numeric device	1	ea.	\$38.00	\$38.00		
7.	Replacement of lost/stolen Alphanumeric device	1	ea.	\$99.00	\$99.00		
8.	Universal Service Fund Fee (if applicable)	1	mo.	.33	.33		
Bidder: In the space below, indicate any mandatory governmental surcharges and taxes not otherwise stated above.							
None							

1. Scope of Work

- 1.1 The Contractor shall provide digital numeric and alphanumeric paging service in the following geographical locations:
- From the Maryland/Virginia state line on the Eastern Shore of Virginia (to include Greenbackville, Assateague, Chincoteague and Saxis) extending South the full length of the Eastern Shore, including its coastal ocean waters and continuing South to the Virginia/North Carolina State line;
 - Across the Chesapeake Bay waters and adjoining tributaries;
 - Northern Neck of Virginia including the counties of Essex, Gloucester, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland
 - Tidewater/Peninsula area to include the counties of, Isle of Wight, James City, Surry, and York; also the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg.
 - Central/Northern Virginia area to include the counties of Caroline, Charles City, Chesterfield, Fairfax, Hanover, Henrico, New Kent, Prince George, Prince William, Spotsylvania, and Stafford; also the cities of Alexandria, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hopewell, Petersburg, and Richmond.
- 1.2 Pagers shall be programmed with local exchange phone numbers. Initially local exchange numbers shall be required for the Eastern Shore (Wachapreague, VA), Gloucester Point, VA, and the Peninsula (Newport News) area of Virginia. Pagers shall be capable of receiving pages as far North as Salisbury, MD.
- 1.3 State agencies, institutions of higher education and other public bodies may purchase from the awarded contract following receipt of a waiver/authorization from the Department of Information Technology, Director of Telecommunications. All orders placed with the Contractor will have a waiver/authorization attached. The Contractor shall not issue any pagers until such waiver is received which authorizes the Contractor to process the request. The term of orders placed by users of the contract will be on a month-to-month basis as stated on the ordering document. The Commonwealth may cancel individual pager service with 30 days notice to the Contractor.
- 1.4 Contractor shall provide local service representatives for the Wachapreague, Gloucester Point, and Peninsula Virginia locations for the reporting of service problems encountered by the Commonwealth while using the services during normal business hours (8:00 a.m. – 5:00 p.m, Monday through Friday, excluding state holidays). For other than normal business hours, an 800 number shall be provided which is staffed and available twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays.

- 1.5 The Contractor shall provide a suitable paging device (new or refurbished) with the establishment of each account. The device shall remain the property of the Contractor unless they indicate otherwise. The Contractor shall repair or replace any failing device within 24 hours as long as the contract is in effect. The Commonwealth will notify the Contractor and pay a replacement cost for any lost or stolen devices at the rate identified in the schedule. Lost belt clips, battery covers, etc. shall be replaced by the Contractor at no charge.
- 1.6 Digital numeric Pagers supplied must have selectable tone and vibrator alarm and capable of displaying and storing a minimum of five (5) pages with a minimum of twelve (12) digits. Scrolling may be used to display numbers with more than twelve (12) digits. Pagers must be able to recognize a duplicate page and not record it as a second individual page. The display must be lighted for dark or low light areas. The ability to program multiple numbers to the pager is required.
- 1.7 Alphanumeric Pagers must have a selectable tone and vibrator alarm, and be capable of storing and displaying a minimum of (20), eight (8) character messages. Scrolling may be used to display characters. Pagers must be able to recognize a duplicate page and not record it as a second individual page. The display must be lighted for dark or low light areas. The ability to program multiple numbers to the pager is required.
- 1.8 All proposed pagers must use standard 1.5 volt, AA or AAA size alkaline or rechargeable batteries. If a rechargeable battery is offered, the pager shall be supplied with a charger.

2. Service Order Processing

- 2.1 The Contractor shall appoint a customer service representative to be named at the time of award that will be the Commonwealth of Virginia prime point of contact for the duration of the contract. Orders will be placed directly to the Contractor by a using agency that has received a written waiver/authorization from the Department of Information Technology, Director of Telecommunications. It shall be the Contractors responsibility to obtain a copy of the waiver acknowledging the using agencies authorization to utilize the Contract. All orders will be processed through the Contractor customer service representative, via, facsimile, e-mail or other acceptable ordering method.
- 2.2 Upon processing a properly issued order, the Contractor must provide the using agency written confirmation within 48 hours that the service requested will be delivered as ordered, or amended with approval from an Ordering Officer. The written confirmation must include the Contractor's service order number, the newly assigned pager telephone number, service installation date, and the telephone number of the Contractor's representative responsible for processing the order.

- 2.3 The Commonwealth shall be rebated, or credited, a prorated hourly portion of the applicable monthly service charges for each occurrence during which the Commonwealth is denied use of the service for eight (8) hours or more during any consecutive thirty (30) day period. The rebate shall apply to the initial eight (8) hours and all additional hours, or portions hereof, during which the Commonwealth is denied access to the service.

3. Mandatory Invoicing Requirements

- 3.1 The Contractor shall furnish the using agency, one consolidated detailed monthly invoice that itemizes all services purchased from the contract. The monthly bill shall at a minimum include the following information:

- Invoice Number*
- Invoice Date*
- Pager ID (phone number, PIN)*
- Using Agency Name
- Using Agency Location (address)Address
- Fixed monthly charges*
- Credits (if any)*
- Number of pages (Informational only)
- Total Monthly Charge*
- Contractor's Federal Employer Identification Number (FEIN)

Asterisks indicate mandatory fields. The other fields are highly desirable and must be provided if the Contractor's system collects such information.

- 3.2 Failure to submit adequate billing details will result in non-payment of the invoice.
- 3.3 Contractor invoices must include the Contractor's Federal Identification Number (FIN).
- 3.4 The Commonwealth is exempt from paying most taxes; therefore, the Contractor's invoices shall not include these taxes.
- 3.5 The Contractor must provide an individual to function as the single point of contact for all billing matters pertaining to the Contract as a result of this solicitation. A person to function as a backup contact must also be assigned to address account billing matters during times when the primary contact is unavailable. At or before the time the contract is executed, the intended Contractor must provide the names, addresses, and voice and facsimile telephone numbers for the contact and back up persons for billing matters.

**CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BIDS (IFB) #01-008**

GENERAL PROVISIONS

1. SCOPE OF CONTRACT

The resulting Contract may be used by all Users which have coverage issues that cannot be addressed by the existing statewide contract for paging services on an "exception" basis, as determined by the Director of Telecommunications, DIT. All "Services" as delineated herein include the cost of the pager.

2. SERVICE COMMENCEMENT DATE

- a. The Contractor shall be prepared to commence paging Services identified in the Schedule within fifteen (15) calendar days from receipt of the fully executed contract (IFB 01-008) signed by the Contracts Manager, DIT. The commencement of Services shall require the Contractor to deliver pagers/paging services to individual users upon receipt of an order from the User. A waiver/authorization from the Director of Telecommunications, DIT must accompany the order. The Contractor shall not deliver any pagers/paging service until such waiver is received which authorizes the Contractor to process the order.
- b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to service commencement date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.
- c. If the Service(s) are not delivered within the time specified herein, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver the proposed Services as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

3. ORDERS

All orders for Services will be placed directly to the Contractor by the User. Each individual order must be accompanied by a written waiver/authorization from the Director of Telecommunications,

DIT. All orders will be processed through the Contractor's Customer Service representative by facsimile, e-mail or other acceptable ordering method.

4. TAXES - FEDERAL, STATE AND LOCAL

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes; such taxes shall not be included in Contract prices. Tax exemption certificates will be furnished if requested by the Contractor.

5. SERVICES

During the term of this Contract, the vendor is not authorized to substitute any Service identified in the Schedule without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered grounds for termination of the Contract.

6. NON-APPROPRIATION

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of nonappropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for Services dependent on such federal funds without further obligation.

7. ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Department of Information Technology's (DIT's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on DIT's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager DIT. Upon DIT's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, Department of Information Technology of the assignment and shall supply the Controller with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event DIT receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after the DIT's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or

revocation of the purported assignment. The Acquisition Services Division of DIT shall promptly notify the Contractor of any assignment notice it receives.

8. GOVERNING LAW

This Contract and any disputes arising hereunder shall be governed in accordance with the laws of the Commonwealth of Virginia and shall be deemed to have been executed and entered into within the Commonwealth of Virginia. Any litigation arising in connection with this agreement shall be brought in the courts of the Commonwealth of Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

If any term or provision of this Contract shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Contract shall remain in full force and effect, and such term or provision shall be deemed null and void.

9. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions, attachments, if any, and all Services specifically listed in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to Services acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for Services acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

10. MODIFICATIONS

This Contract may be modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modification to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, DIT of this solicitation or his duly designated alternate, and for the Contractor the person signing the bid. Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

11. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

12. TERM

The term of this Contract shall be for a period of two (2) years from the date of execution of this Contract by the Contracts Manager, DIT. The Commonwealth at its sole option may extend the term of this Contract for three additional one-year periods at the prices contained herein. The Contractor shall be given thirty days advance written notice of the Commonwealth's intention to extend the term for such additional periods.

13. LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

14. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All Services (each delivery/activation of individual pagers) are subject to inspection and testing by the State, and any which do not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given seventy-two (72) hours from the date of delivery by the Contractor to test, evaluate and accept the Services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the seventy-two (72) hour period). If the Contractor's Services fail to meet the Contract specifications or other requirements, including those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of making payment, however, acceptance by the State following testing and evaluation during the seventy-two (72) day period shall not be conclusive that the Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

15. TERMINATION FOR CONVENIENCE – SERVICES

The Commonwealth may terminate this Agreement or any individual order for Services at any time upon thirty (30) days advance written notice. For purposes of this Agreement, such notice shall only be issued by the Contracts Manager, DIT for the Agreement, and by the User's contracting authority for individual orders. There shall be no termination liability or other costs associated with the termination of an Individual order or this Agreement.

16. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the Services set forth in the Schedule, Commonwealth may, in its own discretion, give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the Services from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the Services which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

17. SERVICES WARRANTY

All Services purchased under this Agreement remain under warranty for the time period commencing after acceptance by the Commonwealth and continuing to expiration of the Agreement, or discontinuance of the Services at the discretion of the Commonwealth.

Contractor shall deliver and maintain the Services as described herein. In addition, the Contractor shall provide a single point of contact for the reporting of service problems encountered by the Commonwealth. The Contractor shall provide local service representatives for the Wachapreague, Gloucester Point, and Peninsula Virginia locations for the reporting of service problems during normal business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding state holidays. The Contractor shall also provide an "800" telephone number twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays for the reporting of service problems during non-business hours.

The Contractor shall repair or replace any failed pager within twenty-four (24) hours after notification by the Commonwealth. Lost belt clips, battery covers, and other accessory items shall be replaced by the Contractor at no cost to the Commonwealth. The Commonwealth will notify and pay the Contractor a replacement cost for any lost or stolen pagers at the rate identified in the Schedule.

18. DISPUTES

Contractual claims whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The public body will render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

A Contractor may not institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that Agency fails to render such decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 11-70, Code of Virginia or Administrative Appeals Procedure Section 11-71, Code of Virginia.

Any dispute, claim or cause of action filed by Contractor (or any party making such claim on behalf of or under the rights of Contractor, his agents or any subcontractor) shall be governed by Sections 11-69, 11-70, 11-71, Code of Virginia (1950), as amended, and any period of limitation set forth therein.

19. INVOICES

All invoices shall be rendered promptly after all Services covered by the invoice have been accepted. No invoice may include any costs other than those identified in the Schedule. Invoices shall provide at a minimum:

1. Type and description of the Service;
2. Serial number, if any;
3. Charge for each item (Service);
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN);

20. PROMPT PAYMENT

Payment shall be due within thirty (30) days after (1) acceptance of all Services, (2) receipt of a correct invoice for such payment, and (3) when applicable, receipt of the payment instruction form referenced in the paragraph entitled ("Assignments"), whichever is latest. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the Commonwealth under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

In accordance with the Virginia Public Procurement Act, all proper charges for which payment is more than seven (7) days overdue shall accrue interest as provided in Sections 11-62.1 through 11-62.9 of the Code of Virginia. The rate of interest shall be determined in accordance with Section 11-62.5 of the Code of Virginia. In no event shall any interest penalty accrue, however, when payment is delayed because of a disagreement between the Commonwealth and the Contractor regarding the quantity, quality or time of delivery of any Service or the accuracy or correctness of any invoice. The Contractor shall notify the Fiscal Officer of the state agency, institution or other public body of all invoices that are in excess of thirty (30) days old.

21 THIRD PARTY BILLING

All Services provided under this Contract, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which state agency, institution, or public body is being billed.

22. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

23. PRIORITY OF SERVICE (DELIVERY)

The Commonwealth of Virginia requires that Contractor provide delivery equal to or better than that provided its commercial and retail customers. Contractors who fail to comply with this provision

are advised that such action shall be considered grounds for termination of this Contract. Contractors whose contracts are terminated for such action may be placed on DIT's List of Debarred/ Ineligible Bidders in accordance with Section 7.16 of the Division of Purchases and Supply's Venders Manual dated January 1995.

24. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have worker's compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that it and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. WORKER'S COMPENSATION – Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on Contractor's policy.
2. EMPLOYERS LIABILITY - \$100,000
3. GENERAL LIABILITY - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. AUTOMOBILE LIABILITY - \$500,000 – Combined single limit.